

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ATLANTIC RECORDING
CORPORATION, LAFACE
RECORDS LLC, SONY MUSIC
ENTERTAINMENT, UMG
RECORDINGS, INC., WARNER
BROS. RECORDS INC., ARISTA
MUSIC, ARISTA RECORDS LLC,
BAD BOY RECORDS LLC,
CAPITOL RECORDS, LLC,
ELEKTRA ENTERTAINMENT
GROUP INC., ROC-A-FELLA
RECORDS, LLC, SONY MUSIC
ENTERTAINMENT US LATIN LLC,
ZOMBA RECORDING LLC,

Plaintiffs,

v.

SPINRILLA, LLC and JEFFERY
DYLAN COPELAND,

Defendants.

Civil Action No.
1:17-CV-00431-AT

**PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL
MEMORANDUM OF LAW, SUPPLEMENTAL STATEMENT OF
UNDISPUTED MATERIAL FACTS, AND ACCOMPANYING
DECLARATION AND EXHIBITS IN SUPPORT OF PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

COME NOW, Plaintiffs Atlantic Recording Corporation, LaFace Records, LLC, Sony Music Entertainment, UMG Recordings, Inc., Warner Bros. Records Inc., Arista Music, Arista Records LLC, Bad Boy Records LLC, Capitol Records, LLC, Elektra Entertainment Group Inc., Roc-A-Fella Records, LLC, Sony Music Entertainment US Latin LLC, and Zomba Recording LLC (“Plaintiffs”) and hereby move this Court for permission to file the attached supplemental memorandum of law, supplemental statement of undisputed material facts, and accompanying attorney declaration and exhibits in further support of Plaintiffs’ Motion for Partial Summary Judgment (Dkt. 42).

Now that fact discovery is closed, Plaintiffs also respectfully request that the Court set a briefing schedule on Plaintiffs’ Motion for Partial Summary Judgment.

I. INTRODUCTION

Plaintiffs filed a Motion for Partial Summary Judgment (Dkt. 42) on July 28, 2017. That motion was directed to Defendants’ Digital Millennium Copyright Act (“DMCA”) affirmative defense. Defendants did not oppose Plaintiffs’ partial summary judgment motion. Instead, Defendants filed a Rule 56(d) motion on August 15, 2017, seeking further discovery (Dkt. 49). This Court has not yet ruled on Defendants’ Rule 56(d) motion. However, fact discovery closed on October 31, 2017, thus rendering Defendants’ Rule 56(d) motion moot.

Plaintiffs seek leave to submit their Supplemental Memorandum of Law in Support of Plaintiffs' Motion for Partial Summary Judgment (Dkt. 42) for two reasons. First, Plaintiffs have obtained new, highly relevant information that the Court should consider in ruling on the motion. Plaintiffs seek to raise this new information now, rather than wait to do so in a reply brief, so that Defendants have an opportunity to respond to it. Second, although Defendants sought additional fact discovery rather than oppose Plaintiffs' partial summary judgment motion on the merits, fact discovery is now closed. In fact, the only information relevant to Plaintiffs' motion that has come to light in the interim unequivocally supports granting Plaintiffs' motion.

II. ARGUMENT

Plaintiffs' partial summary judgment motion made clear that, given the undisputed facts as of July 28, 2017, Defendants' DMCA defense was foreclosed as a matter of law. Since Plaintiffs filed their motion, still more undisputed facts have come to light through discovery (at the behest of Defendants, who insisted that further discovery was necessary to decide Plaintiffs' motion) that make Defendants' ineligibility for the DMCA safe harbor even clearer. First, the U.S. Copyright Office's public records confirm that Defendants failed to register a DMCA designated agent until July 29, 2017, *the day after* Plaintiffs filed their partial

summary judgment motion. Memo. of Law 4-5. This single, indisputable fact by itself establishes that Defendants are ineligible for the DMCA safe harbor at least up until July 29, 2017. *Id.*; Dkt. 42-1 at 8-11. Second, Defendants have now admitted that they did not begin to track repeat infringers on the Spinrilla service at any point before [REDACTED]. Mem. of Law 5-9. Because Defendants failed to reasonably implement a repeat infringer policy until [REDACTED] (assuming they have ever done so) they do not meet separate and independent preconditions for DMCA safe harbor eligibility. *Id.*

Plaintiffs' supplemental memorandum of law, supplemental statement of undisputed material facts, and accompanying declaration and exhibits present these new facts. The nature of these facts and the reasons they bear on Plaintiffs' motion for partial summary judgment are described in more detail in Plaintiffs' proposed supplemental filings.

Defendants have now had an opportunity to develop the facts in response to Plaintiffs' Motion for Partial Summary Judgment and, because fact discovery is now closed, Defendants' Rule 56(d) motion is now moot. As Plaintiffs noted in support of their motion, a ruling now that Defendants are ineligible for the DMCA safe

harbor will substantially streamline—if not end entirely—this litigation going forward. Dkt. 42-1.

III. CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court grant them leave to file the attached supplemental memorandum of law, supplemental statement of undisputed material facts, and accompanying declaration and exhibits in support of Plaintiffs' Motion for Partial Summary Judgment (Dkt. No. 42) so that this Court may consider the additional undisputed material facts revealed since Plaintiffs' first filed their Motion for Partial Summary Judgment. Plaintiffs additionally request that the Court set a briefing schedule on Plaintiffs' Motion for Partial Summary Judgment.

This 17th day of November, 2017. Respectfully submitted,

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CERTIFICATE OF COUNSEL REGARDING FONT SIZE

I, Kenneth L. Doroshow, an attorney, hereby certify that the foregoing has been prepared with a font size and point selection (Times New Roman, 14 pt.) which is approved by the Court pursuant to Local Rules 5.1(C) and 7.1(D).

/s/ Kenneth L. Doroshow
KENNETH L. DOROSHOW

CERTIFICATE OF SERVICE

I, Kenneth L. Doroshow, an attorney, hereby certify that on this 17th day of November, 2017, Plaintiffs' Motion for Leave to File Documents Under Seal and Proposed Order were electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send electronic notification and a service copy of this filing to all counsel of record who have appeared in this matter.

/s/ Kenneth L. Doroshow
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